

# **The Idaho State Department of Agriculture (ISDA) Beef Cattle Animal Feeding Operation Program**

## **Overview of Compliance and Enforcement**

10/03/00

### **Emphasis on Compliance**

The emphasis of the new ISDA Beef Cattle Animal Feeding Operation (Beef Cattle AFO) program will be on gaining compliance with the Beef Cattle Environmental Control Act (the Act), the attendant rules, and the Clean Water Act in the shortest possible time frame. While EPA's NPDES program has inspected 102 Beef AFOs since 1994, ISDA anticipates bringing more than 200 Beef Cattle AFOs into compliance in the first year of the new Beef AFO Program and an estimated 1500 in the following 4 years. Additionally, the ISDA program will regulate *all* Beef Cattle AFOs in the state, whereas the EPA program has traditionally focused on only Beef CAFOs.

This program is patterned after ISDA's highly successful Dairy Waste Program. The Dairy program has been nationally recognized (received Al Gore Hammer Award) and supported by EPA as an innovative way to accomplish the goals of the Clean Water Act. In fact, all of the states with delegated NPDES programs that have reviewed the dairy program have stated that it is far more comprehensive than their NPDES programs.

Through routine inspections, compliance orders, technical assistance, complaint inspections, monetary penalties and follow-up inspections ISDA will bring all inspected Beef AFOs into compliance.

The tools that will be used to accomplish this level of compliance will be:

- Year Round Inspection Program (Routine, Complaint, and Follow-up Inspections)
- Engineering Evaluations of Facilities & Technical Assistance
- Compliance Orders
- Timely Corrective Actions & Re-Inspection to Assure Compliance
- Monetary Penalties (\$10,000 per violation or \$1,000 per day of a continuing violation, the same as IDEQ under state law) with the fines going the Idaho State School Building Fund.

These compliance, technical assistance and enforcement tools will be used in the manner deemed most appropriate given the site-specific situations encountered. IDEQ and EPA will provide other support tools for imminent and substantial endangerment issues that cannot be effectively handled by ISDA in a timely manner.

### **Year Round Inspections**

In recent years, EPA has been operating their NPDES Beef CAFO compliance program on a seasonal inspection basis, which resulted in 13 inspections this past spring. From this effort, 6 warning letters were issued and penalties were assessed on 2 others. Given the minimal inspection presence, EPA believes that the use of penalties is a key to gaining deterrence in its program.

In contrast, ISDA proposes to maximize on site presence through a year round inspection program. ISDA Livestock Inspectors, who are already inspecting many Beef Cattle AFO facilities for compliance with animal health regulations, have been trained and will conduct the inspections with the assistance of ISDA Technical Services Engineers.

This approach will result in more direct and immediate compliance as well as a high degree of deterrence from on-site presence. The inevitability of compliance/enforcement actions under this new program has already resulted in over 40 requests for on-site technical assistance that the ISDA has responded to.

### **Engineering Evaluation**

Livestock Inspectors will conduct the initial inspection of facilities with an ISDA staff engineer. This will provide the ability to immediately evaluate the adequacy of the facility to retain runoff and the likelihood of discharges even when the inspection is conducted during dry periods. A key difference between the ISDA program and the current program run by EPA is the ability to identify deficiencies and require engineered improvements during non runoff periods and where “potential to discharge” situations are encountered.

### **Enforcement Actions and Penalties**

All Beef Cattle AFOs inspected by ISDA that are found to have discharges or items of non-compliance will be subject to enforcement action. Specific enforcement actions may range from a compliance order to civil penalties.

ISDA anticipates that the majority of these enforcement actions will be compliance orders. However, monetary penalties may be assessed depending on the severity of the non-compliance, previous inspection presence, amount of any discharge, and other pertinent factors. Violation of an ISDA compliance order will result in assessment of monetary penalties that will be deposited in the Idaho State School Building Fund.

- When ISDA inspectors have completed an inspection the Beef Cattle AFO operator will be given a copy of the Inspection Report form which documents all items of noncompliance. Additionally, the Beef Cattle AFO operator will receive clear and specific direction on the types of improvements necessary to prevent discharges from occurring. This will take the form of a compliance order, which will also contain a schedule for the improvements to be completed. It should be noted that the improvements would also include those modifications to prevent pollutants from impacting groundwater (this authority is granted through Section 22-4902 of the Act).
- The schedules established in the compliance orders will be directly related to the type of improvements required. Quick fixes will require short time frames, while more involved

activities, such as constructing an impoundment (requiring engineering review and approval) will require additional time.

In all cases, follow-up inspections will be geared toward the specific time frame for corrective action and will be a matter of routine activity for the area inspector (and engineering staff where appropriate). This will enable ISDA to keep abreast of problems and identify the need for enforcement escalation.

- The inspections and subsequent compliance orders are considered to be the backbone of the ISDA compliance effort. Based on the assumed level of noncompliance, the number of planned inspections, and the likelihood of recalcitrant operators violating ISDA compliance orders, the number of monetary penalties assessed is likely to be greater than the number EPA would issue under its current seasonal program.
- ISDA anticipates that the program will bring 1700 Beef Cattle AFOs into compliance during the first 5 years. For purposes of comparison, if each facility had to spend \$2000 to gain compliance, the total cost over the first 5 years will amount to \$3.4 million spent for environmental improvements. This is estimated to be significantly higher than the penalties assessed and resulting cost of improvements by the EPA program since the inception of the Clean Water Act.

### **Other Relevant Issues**

#### **Discharges**

ISDA does not expect to encounter as many facilities with *flowing discharges* as they did during the early periods of the Dairy Waste Program. Beef Cattle AFOs are significantly different from dairies in respect to discharges. Dairies generate large quantities of wastewater from wash-down, flushing, cleaning, and cooling activities on a daily basis. The only significant amounts of water used on a beef operation are for watering cattle or dust control.

In addition, and because of the year round inspections, it is expected that actual *flowing discharges* will be infrequently encountered, and then only during runoff periods. All such discharges to surface waters will result in enforcement actions.

#### **Direct Animal Contact**

Direct animal contact with waters of the State by cattle confined in a Beef Cattle AFO will be considered, by ISDA, to be a discharge. This situation will result in an enforcement action, regardless of the size of the Beef Cattle AFO.

#### **Small Facilities**

EPA has indicated that small AFOs (less than 300 AU) are a significant problem in Region 10. In addressing this problem, ISDA offers a streamlined approach that deals with all Beef AFOs regardless of size. During the first inspection, all small Beef AFOs that are either discharging or have the potential to discharge will be issued a corrective action schedule. If timely corrective action is not forthcoming the small operations, i.e. those facilities with less than 300 animal units, will be formally designated as an Idaho Beef Cattle AFO, and enforcement actions will be taken.